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Attorneys for Defendants State of Oregon and Robert Sokol

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

IRVING ROBINSON,

Plaintiff,

v.

MULTNOMAH COUNTY, STATE OF
OREGON, JOHN DOE 1, JOHN DOE 2, and
ROBERT SOKOL,

Defendants.

Case No. 3:08-cv-821-HU

DEFENDANTS STATE OF OREGON AND
ROBERT SOKOL'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT

In response to the Irving Robinson's (Plaintiff) First Amended Complaint, Defendants State of Oregon and Robert Sokol (Defendants) hereby appears and admits, denies and alleges as follows:

1.

Admit that Plaintiff was in the custody of Multnomah County. Admit that Plaintiff brings his claims pursuant to the Oregon Tort Claims Act, ORS 30.260 *et seq.* Admit that

Plaintiff provided the State of Oregon with Tort Claim Notice on or about July 5, 2007.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegation contained in ¶ 1 of Plaintiff's Complaint.

2.

Admit that Defendant Multnomah County is a duly organized county under Oregon law and is a public body liable for the tortious conduct of its agents and employees. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegation contained in ¶ 2 of Plaintiff's Complaint.

3.

Admit that Robert Sokol is an employee of the Circuit Court of the State of Oregon for Multnomah County (the Fourth Judicial District) and as such is an employee of the State of Oregon. Admit to the provisions of ORS 136.260. Deny that the State of Oregon is responsible for the torts of its employees. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegation contained in ¶ 3 of Plaintiff's Complaint.

4.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation contained in ¶ 4 of Plaintiffs' Complaint.

5.

Admit that ORS 136.290 provides:

(1) Except as provided in ORS 136.295, a defendant shall not remain in custody pending commencement of the trial of the defendant more than 60 days after the time of arrest unless the trial is continued with the express consent of the defendant. Absent the consent of the defendant or an extension under ORS 136.295, the court shall order that the trial of the defendant commence within 60 days after arrest if the state is prepared to proceed to trial.

(2) If a trial is not commenced within the period required by subsection (1) of this section, the court shall release the defendant on the own recognizance of the defendant, or in the custody of a third party, or upon whatever additional reasonable terms and conditions the court deems just as provided in ORS 135.230 to 135.290.

6.

Admit that Plaintiff was not released on November 20, 2006. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in ¶ 6 of Plaintiffs' Complaint.

7.

Admit that on December 8, 2006 a Multnomah County Circuit Judge ordered plaintiff's immediate release. Admit that Multnomah County did not release plaintiff upon the Court's order immediately. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in ¶ 7 of Plaintiffs' Complaint.

8.

Admit that on February 27, 2007 Plaintiff was convicted by a jury on his criminal charge in Circuit Court of the State of Oregon for Multnomah County Case Number 060952029.

9.

Admit that the Multnomah County Jail released Plaintiff on February 27, 2007.

10.

Deny the allegations contained in ¶ 10 of Plaintiff's Complaint.

11.

Deny the allegations contained in ¶ 11 of Plaintiff's Complaint.

12.

Deny the allegations contained in ¶ 12 of Plaintiff's Complaint.

13.

Deny the allegations contained in ¶ 13 of Plaintiff's Complaint.

14.

Deny the allegations contained in ¶ 14 of Plaintiff's Complaint.

15.

Deny the allegations contained in ¶ 15 of Plaintiff's Complaint.

16.

Admit that Plaintiff was aware of his confinement. Deny the remainder of the allegations contained in ¶ 16 of Plaintiff's Complaint.

17.

Admit that Plaintiff was aware of his confinement. Deny the remainder of the allegations contained in ¶ 17 of Plaintiff's Complaint.

18.

Admit that Plaintiff was aware of his confinement. Deny the remainder of the allegations contained in ¶ 18 of Plaintiff's Complaint.

19.

Admit that Plaintiff was aware of his confinement. Deny the remainder of the allegations contained in ¶ 19 of Plaintiff's Complaint.

20.

Deny the allegations contained in ¶ 20 of Plaintiff's Complaint.

21.

Deny the allegations contained in ¶ 21 of Plaintiff's Complaint.

22.

Deny the allegations contained in ¶ 22 of Plaintiff's Complaint.

23.

Deny the allegations contained in ¶ 23 of Plaintiff's Complaint.

24.

Deny the allegations contained in ¶ 24 of Plaintiff's Complaint.

25.

Deny each and every allegation not expressly admitted herein, either because the allegation is objectionable (vague and conclusory), or because it is untrue, or because Defendants' counsel does not currently have sufficient information to admit or deny the truth or falsity of the allegation.

FIRST AFFIRMATIVE DEFENSE

(Judicial Immunity)

26.

Defendants reallege the admissions and allegations set forth above.

27.

To the extent Plaintiff sues for actions taken or not taken by Defendants or Defendants' employees or agents, while performing acts associated with the judicial process, Defendants are absolutely immune under the doctrine of judicial immunity.

SECOND AFFIRMATIVE DEFENSE

(Failure to state a claim)

28.

Defendants reallege the admissions and allegations set forth above.

29.

The complaint fails to allege ultimate facts constituting any claim for relief.

THIRD AFFIRMATIVE DEFENSE

(Insufficient Tort Claim Notice)

30.

Defendants reallege the admissions and allegations set forth above.

31.

Plaintiff has failed to provide timely and effective tort claim notice.

FOURTH AFFIRMATIVE DEFENSE

(Consent)

32.

Defendants reallege the admissions and allegations set forth above.

33.

Plaintiff, through counsel, effectively consented to remaining in prison.

FIFTH AFFIRMATIVE DEFENSE

(Failure to mitigate)

34.

Defendants reallege the admissions and allegations set forth above.

35.

Plaintiff was aware of his confinement and failed to mitigate his damages by cooperating with the pretrial supervision program, contacting his counsel or petitioning for release.

SIXTH AFFIRMATIVE DEFENSE

(Justification – Probable Cause)

36.

Defendants reallege the admissions and allegations set forth above.

37.

Defendants had probable cause to justify restraining Plaintiff, acted with colorable jurisdiction and are therefore immune.

SEVENTH AFFIRMATIVE DEFENSE

(No personal or active participation)

38.

Defendants reallege the admissions and allegations set forth above.

39.

Defendants did not instigate Plaintiff's imprisonment falsely or participate physically or directly in his confinement.

EIGHTH AFFIRMATIVE DEFENSE

(Fault of others)

40.

Defendants reallege the admissions and allegations set forth above.

41.

Plaintiff's damages were caused in whole by the fault of others, specifically his criminal defense attorneys.

NINTH AFFIRMATIVE DEFENSE

(State is not a person)

42.

Defendants reallege the admissions and allegations set forth above.

43.

The State of Oregon is not a person subject to suit under 42 U.S.C. § 1983.

TENTH AFFIRMATIVE DEFENSE

(Qualified Immunity)

44.

Defendants reallege the admissions and allegations set forth above.

45.

Defendant Sokol is entitled to qualified good faith immunity as to the Third Claim for Relief under 42 USC § 1983.

THEREFORE, having answered the Complaint, Defendant requests a judgment in favor of Defendant and against Plaintiff, dismissing this action with prejudice, awarding Plaintiff nothing and awarding Defendant the attorneys' fees, cost and disbursements incurred in the defense of this action.

DATED this 14 day of July, 2008.

Respectfully submitted,

HARDY MYERS
Attorney General

A handwritten signature in black ink, appearing to read "Ben Miller", with a long horizontal flourish extending to the right.

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Of Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on July 14, 2008, I served the foregoing DEFENDANTS STATE OF OREGON AND ROBERT SOKOL'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT upon the parties hereto by the method indicated below, and addressed to the following:

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Of Attorneys for Plaintiff

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